Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

SECOND APPEAL NO. 45 OF 2005

APPELLANT:
(Defendant)

Babulal Satnami, Son of Shri Hiradas Satnami, aged about 65 years, resident of Gram Riko Mandir, Hasaud, Tehsil & District Raipur

VERSUS

RESPONDENTS:
(Plaintiffs)

1. Smt. Triloka Bai, widow of Late Punauram, aged about 60 years.
2. Udairam, son of Late Punauram, aged about 45 years.
3. Lakhanlal, son of Late Punauram, aged about 32 years.

All residents of Village Chhatina Mandir, Hasaud, Tehsild & District Raipur (C.G.)

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908

(16)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 45/2005

Appellant : Babulal Satnami

Versus

Respondent : Smt. Triloka Bai & ors.

Shri B.P.Sharma learned Counsel for the appellant.

JUDGMENT

(Passed on 25-2-2005)

The instant second appeal has been filed by the appellant/defendant against the impugned judgment and decree dated 30.11.2004 passed by 8th Additional District Judge, Raipur in First Civil appeal No. 7-A/2004 by which the appeal preferred by the respondents/plaintiffs was allowed and the suit was decreed by reversing the finding of the trial Court recorded on 7.12.99 by 7th Civil Judge Class II in Civil Suit No. 103-A/1998 who had partially decreed the suit of the plaintiffs and dismissed their prayer for issuance of perpetual injunction.

The appellant by this appeal has challenged the impugned judgment and decree passed by the First Appellate Court on the ground that during the pendency of the appeal the appellant/defendant had preferred a cross objection under order 41 Rule 22 of the C.P.C. along with an application for condonation of delay in filing the cross objection. The learned First Appellate Court by the impugned judgment has decreed

the suit of the plaintiffs and granted all the reliefs claimed by them. It also granted the relief for prohibitory injunction denied by the trial Court and while passing the impugned judgment and decree it altogether ignored the cross objection of the appellant/defendant herein and there is no order either on his application for condonation of delay in filing the cross objection nor the cross objection itself has been considered which is apparent from a bare reading of the impugned judgment. Apart from the above grounds the appellant has also assailed the finding of the first appellate Court on the ground that the impugned judgment is based on documents which are inadmissible in evidence and which has not been taken into consideration by the trial Court as they were not duly proved as per the provisions of law. However, the learned First Appellate Court relied upon the above-mentioned documents on the ground that the same can be used by the plaintiffs and considered for collateral purpose.

The brief facts of the case are that the plaintiffs filed a civil suit on the pleadings that they are the recorded owners of the suit land which was purchased by them through two registered sale deeds of Ex P-5 and P-6 in the name of their father Punau on 8.5.59 who came into possession of the suit property from the date of purchase and after the death of Punau they became absolute owner of the same. In the year 1995 the defendant started interfering with the possession of the suit property and therefore the suit for dispossession was filed by the plaintiffs. They also filed an application for temporary injunction against the defendant and after hearing both the parties learned Civil Judge passed an order of temporary injunction on 04-01-1996 which was subsequently confirmed by the VII Additional District Judge, Raipur vide order dated 06-01-1999 by rejecting the appeal preferred by the present appellant. The statement of plaintiff was recorded on 22-06-1997 and the case was fixed for the evidence of defendants' witnesses and the defendant was proceeded ex parte on 30-09-1999 and thereafter the case was fixed for judgment on 06-10-1999. On 04-10-1999 an application for setting aside ex parte order under Order 9 Rule 9 of the CPC was filed by the defendants on 06-10-1999 and the same was dismissed on 05-11-1999 and the learned Civil Judge vide

order dated 07-12-1999 partially decreed the suit by allowing their prayer for declaration of title but however he rejected the prayer of prohibitory injunction. The plaintiff preferred the first appeal and the learned First Appellate Court allowed the appeal of the plaintiffs and totally decreed their suit.

Appellant / defendant during the pendency of the appeal filed the cross objection under order 41 Rule 22 of the CPC alongwith an application under Section 5 of the Limitation Act for condonation of delay in filing the cross objection. After hearing the parties learned first Appellate Court allowed the appeal of the respondents / plaintiffs and set aside the finding recorded against issue No. 3, 4 and 5 by the Trial Court and passed the decree of perpetual injunction in favour of the plaintiffs and against the defendants to the effect that he shall not interfere with the possession of the suit property described in Schedule 'A' either personally or through his agent.

Learned counsel for the appellant submits that by the impugned judgment the learned First Appellate Court has not considered the cross objection preferred by the appellant / defendant. Even the application filed for condonation of delay in submitting the cross objection has not been decided and for this reason the judgment and decreed passed by the First Appellate Court is without application of mind and the same deserves to be set aside. At this juncture it would be appropriate to refer to the cross objection that has been preferred by the appellant / defendant under Order 41 Rule 22 of the CPC which is as under:

1. That by the impugned decree the Courts below have prima facie decided issue no. 1 and 4 illegally, erroneously and wrongly.
2. That the Courts below did not consider that the suit land was never sold but mortgaged with the respondents and the mortgage deed has been written.
3. That the respondents have totally failed to prove issue No. 1 and 4.

Learned First appellate Court in paragraph 4 of the judgment while considering the written statement filed by the defendant has recorded a finding in paragraphs 9 and 10 of the impugned judgment for deciding the above issue in favour of the respondents / plaintiffs and therefore it can not be said that the cross objection preferred by the appellant / defendant has not been considered. Concurrent finding recorded by both the Courts below against issue No. 1 and 4 recorded in favour of plaintiffs / respondents is based on unrebutted oral and documentary evidence being the registered sale deed, the records of right and material testimony of plaintiffs and their witnesses and as such the above finding is a concurrent finding of fact recorded by the both the Courts below.

That the appellant has also challenged the finding of the first Appellate Court whereby reversing the finding of the trial Court the appellate Court has granted the decree for prohibitory injunction in favour of the respondents/ plaintiffs and against the defendant.

Learned counsel for the appellant submits that the learned trial Court has rightly held that the appellant/defendant has failed to proof that he was in possession of the suit property and the documents exhibited by the plaintiffs were not admissible in evidence. However the learned Appellate Court allowed the appeal of the plaintiffs by relying on this document on the ground that the document produced by the plaintiffs could not be taken in to consideration for collateral purpose.

However, in my considered opinion the argument of the appellant in this regard is also untenable. Once it is held that the plaintiffs are the owners of the suit property by virtue of sale deeds as per Ex. P-5 and P-6 executed in favour of their father in the year 1959, the possession goes to the owners and the learned first Appellate Court was justified in holding that the plaintiffs were in possession of the suit property and by virtue of the above sale deeds the names of the plaintiffs were duly recorded in the records of rights (Rin Pustika) Ex. P-1 and as the plaintiffs and their witnesses have categorically stated on their statements on oath that after purchasing the suit land they were in continuous possession of the same, the finding of the First Appellate Court that the respondents / plaintiffs

were in possession of the suit property, can not be faulted particularly in the light of the fact that the defendant did not adduced any evidence in support of his case.

In the light of the aforesaid discussion, I am of the view that there is no infirmity in the concurrent findings of both the Courts below that the respondents / plaintiffs are the owners of the suit property and as such they are entitled for perpetual injunction, and there is no substantial question of law involved for adjudication of the appeal.

In the result, the appeal being without substance is liable to be dismissed and it is dismissed.

Sd/-
Dhirendra Mishra
Judge

Jyotishi